

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 32246 of 2007(L)

PETITIONER:

M/S. GODREJ SARA LEE LTD.,
AZAD COMPLEX, PERUMPATTA ROAD, ELAMKULAM,
COCHIN-26, REPRESENTED BY ITS GENERAL MANAGER
(LEGAL), SHRI BHALCHANDRA SHRIPAD VIRKAR.

BY ADV. SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN

RESPONDENTS:

1. THE ASSISTANT COMMISSIONER (AA),
O/O. DEPUTY COMMISSIONER (A), COMMERCIAL TAXES,
ERNAKULAM.
2. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVT. PLEADER MR. GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28/11/2007, THE COURT ON 18/12/2007 DELIVERED THE
FOLLOWING:

ANTONY DOMINIC, J.

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W.P. (C) No. 32246 OF 2007 - L
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Dated this the 18th day of December, 2007

J U D G M E N T

The prayer sought for in this writ petition are to quash Ext.P11 Final Assessment Order for 2005-06 under the KVAT Act and for directing the respondents to refrain from enforcing the demand pursuant to Ext.P11. Petitioner is also seeking a declaration that the sales turnover of its products is liable to be taxed only at 4% and that the levy of tax at 12.5% is illegal and unauthorized.

2. Ext.P11 challenged in this writ petition is the final assessment order for the period 2005-06. By this order, tax at the rate of 12.5% has been levied on the petitioner and the balance tax due to be remitted is Rs.1,59,60,720/- and interest is also levied. The contention raised is that what is manufactured by the petitioner consists of household pesticides and insecticides which fall under serial No.45(5) of the IIIrd schedule of KVAT Act and the rate of tax payable thereon is only 4%. According to the

petitioner, despite this, petitioner is levied 12.5% tax mainly relying on SRO 88/06 and Ext.P12 clarification issued by the Commissioner of Commercial Taxes.

3. Petitioner submits that Exts.P2 to P9 assessment orders and notices for best judgment assessment for the period April 2006 to November 2006 were challenged before this Court in W.P.(C)No.1142 of 2007 and that the writ petition was dismissed by Ext.P1 judgment, holding the view that the issue was covered against the petitioner in view of the judgment of this Court in OTA No.6 of 2006. It is submitted that against the judgment of this Court, a Special Leave Petition was filed before the Supreme Court and the SLP was disposed of by Ext.P10 Order dated 10.10.2007. It is submitted that since the basis of Ext.P11 final assessment order and the assessment orders and notices covered by Ext.P10 Order of the Supreme Court being similar, Ext.P11 also deserves to be set aside for the reasons stated in Ext.P10. It is further contended that in view of Ext.P12 clarification issued by the Commissioner of Commercial Taxes, which is binding on the department, the remedy of appeal is illusory. It is on this reasoning, without filing the statutory

appeal, the petitioner has approached this Court, by filing this writ petition seeking to quash Ext.P11 Assessment Order.

4. From the facts pleaded in this writ petition, it is evident from what the petitioner now seeks is basically a declaration that the rate of tax applicable to the products manufactured and marketed by the petitioner is only 4% while 12.5% tax is levied by the Department. In view of the nature of the controversy raised by the petitioner there is absolutely no justification for the petitioner not to avail of the statutory remedy of appeal.

5. The argument that in view of Ext.P12, the clarification issued by the Commissioner of Commercial Taxes, the remedy of appeal will not be effective, also cannot be accepted. It is true that by virtue of the provisions contained in the KVAT Act, the departmental officers are bound by the clarification issued by the Commissioner of Commercial Taxes. But in so far as the petitioner is concerned, that cannot stand in the way of the petitioner. This very contention was urged by the petitioner in W.P.(C)No. 29947 of 2006. In that writ petition, the petitioner had disputed the rate of tax payable by it. In Ext.P13 judgment,

this Court declared that Ext.P12 clarification (which was produced as Ext.P7 in that case), shall not bind the petitioner and relegated it to pursue its statutory remedy. In view of Ext.P13 judgment in W.P.(C)No.29947 of 2006, the argument of the petitioner that Ext.P12 clarification will cause prejudice to it cannot be accepted.

6. In so far as Ext.P10 Order of the Apex Court is concerned, at the outset I should remind myself that the contention of the petitioner in this writ petition is that tax payable is only at 4% and not 12.5%. Ext.P10 order discloses that Exts.P2 to P9 herein were interfered with, on the ground that the show cause notices that were issued by the Department were defective. In this case, the petitioner has not urged any such contention. On that reasoning and without pronouncing anything on the merits of the classification dispute, that Special Leave Petition was disposed of by the Apex Court making it clear that if the Department is so advised it can raise the clarification dispute in accordance with law.

7. Thus, in that judgment the Apex Court has not held anything on the rate of tax that is payable and the assessment orders were interfered with in the show cause notices that were

issued by the Department. In this case, petitioner does not content that the show cause notice is defective for any reason as in Ext.P10 order and Petitioner has not even produced the show cause notice dated 07.06.2007 that is referred to in Ext.P11 order of assessment. Therefore there is nothing on record to indicate that the reasoning adopted by the Apex Court in regard to the defective show cause notices has any relevance in so far as the Assessment Order that is under challenge in this case is concerned.

8. Having, regard to all the above, I see no justification entertain the writ petition. In my view, if at all the petitioner is aggrieved, it has to take recourse to the statutory remedies that are provided for in the Act itself in which event, the appeal will be disposed of untrammelled by the findings in this judgment.

9. For the aforesaid reasons and without prejudice to the appellate right available and the contentions raised this writ petition is dismissed.

10. Along with I.A. No. 16447/07 the petitioner has produced Exts. P15, a notice issued under the Revenue Recovery Act for realising the amount that is due under Ext. P11. Now that

I have relegated the petitioner to pursue the statutory remedies that is available, I also direct that further proceedings pursuant to Ext. P15 shall be deferred for a period of two weeks from today and in the meanwhile it will be open to the petitioner to seek appropriate orders from the appellate authority.

ANTONY DOMINIC
JUDGE

jan/-